

ST 05-6

Tax Type: Sales Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,**

v.

**THE ABC CONFERENCE ON
ANALYTICAL CHEMISTRY AND
APPLIED SPECTROSCOPY,
APPLICANT**

No: 03 ST 0000

Sales Tax Exemption Number

**Kenneth J. Galvin
Administrative Law Judge**

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Mr. John Doe and Mr. Ron Doe, on behalf of The ABC Conference on Analytical Chemistry and Applied Spectroscopy; Mr. Shepard Smith, Special Assistant Attorney General, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: On August 20, 2003, the Department of Revenue of the State of Illinois (hereinafter the "Department") issued an STAX-304, "Second Denial of Sales Tax Exemption" to The ABC Conference on Analytical Chemistry and Applied Spectroscopy (hereinafter "applicant" or "ABC") denying its request that the Department issue it an exemption identification number so that it could purchase tangible personal property at retail free from the imposition of retailers' occupation tax as set forth in 35 ILCS 105/1 *et seq.* On December 8, 2003, ABC protested the Department's decision and requested an

administrative hearing which was held on October 28, 2004 with Mr. Smith, former Treasurer and President of ABC, testifying.

The sole issue to be determined at the hearing was whether ABC qualified for an exemption identification number as “a corporation, society, association, foundation or institution organized and operated exclusively for charitable ... purposes.” 35 ILCS 105/3-5(4). Following a careful review of the evidence and testimony presented at the hearing, I recommend that the Department’s denial be affirmed.

FINDINGS OF FACT:

- 1.The Department’s case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department’s denial of exemption dated August 20, 2003. Tr. pp. 9-10; Dept. Ex. No. 1.
- 2.ABC sponsors an annual conference for scientists in the field of analytical chemistry and spectroscopy. Analytical chemistry is involved with the analysis of materials. Spectroscopy is a focused branch of analytical chemistry in which various types of lights are used to analyze a sample to determine its composition. Tr. pp. 19-20, 41.
- 3.The annual conferences, which last a week, include approximately 2,000 technical presentations during 20 concurrent sessions, approximately 100 short instructional courses that last from a half day to two days, workshops for students and teachers, and exposition of laboratory equipment, supplies and services, journals and publications, and demonstrations and workshops by approximately 1,000 exhibiting companies occupying 3,000

booths and requiring 1 million square feet of space showing how their products or services work. Tr. pp. 35-40; App. Ex. No. 7.

4.Booths are rented to exhibitors in 10x10 foot spaces for approximately \$1,900/space. Exhibitors may rent more than 1 space. Exhibitors must be selling or promoting a product related to chemistry or spectroscopy or providing a service to chemists. Approximately 5% to 10% of exhibitors are government organizations such as the Environmental Protection Agency and Naval Research Labs or professional chemist societies. Tr. pp. 125-135; Dept. Ex. No. 3.

5.ABC derives its revenue from two sources: registration fees of those attending the conference and fees for taking the instructional courses offered at the conference and the rental of booth space by the exhibitors at the conference. Tr. p. 35; App. Ex. No. 2.

6.ABC had its 55th conference in Anywhere from March 7-12, 2004. Total registration was 25,000 with slightly more than 13,000 being conferees and 12,000 being exhibitors. ABC last had a conference in Anywhere in 1996 and may return to Anywhere in 2009. Tr. pp. 24-27, 34, 115; App. Ex. Nos. 2 and 17; Dept. Ex. No. 3.

7.ABC is organized as a “non-profit corporation” in Anywhere. ABC’s Articles of Incorporation state that the corporation is “organized exclusively for educational, charitable and scientific purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code...” ABC’s Form 990, “Return of Organization Exempt from Income Tax” for tax years 2002, 2001 and 2000 state that its purpose is “to establish and maintain an

international forum through the sponsorship of expositions, conferences and other educational programs.” ABC is exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. Tr. pp. 27-33; App. Ex. Nos. 3, 5 and 6.

8. For the 2004 annual conference in Anywhere with approximately 13,000 conferees, approximately 19% paid no registration fee to attend, 46% paid an early registration fee of \$85, 25% paid the full registration fee of \$160 and 10% (students) paid a registration fee of \$20. Tr. pp. 54-58; Dept. Ex. No. 3.

9. Approximately 1,200 of the 13,000 conferees at the 2004 convention in Anywhere registered and paid for short courses. The cost depends on the length of the course and whether a specialized instructor must be hired. Approximately 120 conferees paid a reduced fee or no fee for the short courses. Tr. pp. 76-79.

10. ABC has two shareholders, the Society for Analytical Chemists of ABC (“ABC-1”) and Spectroscopy Society of ABC (“ABC-2”). The ABC-1 is a non-profit organization of 500 members dedicated to the advancement of analytical chemistry through science education. The ABC-2 is a professional society of scientists dedicated to the promotion of education for its members and the ABC community. Tr. pp. 59-63; App. Ex. Nos. 9 and 10.

11. ABC-1 and ABC-2 distribute the excess funds from the ABC conference for scholarships, grants or science education. Tr. pp. 64-65, 113.

12. During the annual conference, ABC sponsors “Science Week” which is geared towards promoting science education to teachers and students in the metropolitan area. Awards, including a plaque and honorarium, are presented to teachers. A major grant award of \$25,000 is made to a local institution or educational program. Workshops are put on for high school or middle school science teachers. Teachers must pay a \$25 refundable deposit. Students can attend demonstrations and visit the exhibits, if the exhibitors allow it. For the Anywhere ABC conference in 2004, 100 teachers and 500 to 700 students attended Science Week. Tr. pp. 99-106; App. Ex. Nos. 7, 18 and 19.

CONCLUSIONS OF LAW:

Section 2-5 of the Retailers’ Occupation Tax Act (“ROTA”) provides that gross receipts from the sale of tangible personal property sold to a corporation, society, association, foundation or institution organized exclusively for charitable, religious or educational purposes are exempt from tax imposed by the ROTA. 35 ILCS 120/2-5(11). Section 3-5 of the Use Tax Act (“UTA”) complements Section 2-5(11) of the ROTA and provides in pertinent part that use of the following tangible personal property is exempt from tax imposed by the UTA: Personal property purchased by a government body, by a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes. 35 ILCS 105/3-5(4).

ABC seeks to qualify for an exemption identification number as a “corporation, society, association, foundation or institution organized and operated exclusively for charitable...purposes [.]” 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11). As statutory provisions exempting property or entities from taxation, Section 2-5(11) of the ROTA

and Section 3-5(4) of the UTA must be strictly construed against exemption with any doubts concerning the applicability of the exemptions resolved in favor of taxation. Van's Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989). The applicant bears the burden of proving "by clear and convincing" evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225, (2d Dist.1991). All debatable questions must be resolved in favor of taxation. People ex rel. Nordland v. The Assoc of the Winnebago Home for the Aged, 40 Ill. 2d 91 (1968).

An examination of the record establishes that ABC has not demonstrated, by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant an exemption from sales tax as an association organized exclusively for charitable purposes. Accordingly, under the reasoning given below, the determination by the Department denying ABC a sales tax exemption number should be affirmed. In support thereof, I make the following conclusions:

In Methodist Old People's Home v. Korzen, 39 Ill. 2d 149 (1968), (hereinafter "Korzen") the Illinois Supreme Court outlined several factors to be considered in assessing whether an organization is actually an institution of public charity: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the burdens on government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.

The above factors are guidelines for assessing whether an institution is a charity, but are not definitive requirements. DuPage County Board of Review v. Joint Comm’n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2d Dist. 1995). Thus, a rigid formula is not to be applied to all fact situations but instead “courts consider and balance the guidelines by examining the facts of each case and focusing on whether and how the institution serves the public interest and lessens the State’s burden.” *Id.* at 469.

The word “exclusively” as used in the phrase “organized exclusively for charitable purposes” has been defined by the Department in a regulation promulgated pursuant to the authority of the ROTA. Regulation 2005(n) provides that if a substantial purpose or activity of the purchaser is not charitable, the Department will not consider the purchaser to be organized and operated exclusively for charitable purposes within the meaning of the ROTA. 86 Ill. Adm. Code § 130.2005(n). An exclusively charitable purpose need not be interpreted literally as the entity’s sole purpose; it should be construed to mean the primary purpose, but not a merely incidental purpose or secondary purpose or effect. Gas Research Institute v. Dep’t of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987).

The record in this case clearly shows that ABC is not organized “exclusively” for charitable purposes. ABC’s primary purpose is the sponsorship of an annual conference for scientists in the field of analytical chemistry and spectroscopy. ABC’s Form 990, “Return of Organization Exempt from Income Tax” for tax years 2000, 2001 and 2002 state that its purpose is “to establish and maintain an international forum through the sponsorship of expositions, conferences and other educational programs.” App. Ex. No. 6. There is nothing charitable about sponsoring expositions, conferences and educational

programs and a close look at the ABC conference shows that it is a business, not a charity.

The “typical” ABC Conference “includes over 1,000 exhibiting companies, occupying about 3,000 booths, and requiring one million square feet of floor space.” The conference requires “an estimated 12,000 hotel rooms on peak nights” and “contributes an estimated \$60 million to the economy of the host city during the conference week.” App. Ex. No. 7. When asked what the rationale or the purpose of the exhibits was, Mr. Smith testified that “from the business standpoint of the company, it’s obviously to sell their equipment. But in the process of doing so, they first have to educate the customer as to why they need to purchase that equipment.” “They rent out seminar rooms and describe the capabilities of their instruments, the applications of their instruments ... why anybody would ever purchase it and what particular use it has.” Tr. pp. 109-110. “Most of [the exhibitors] are there to sell their wares.” Tr. p. 119. In each of tax years 2000, 2001 and 2002, ABC earned approximately \$6.8 million from rental of space to the exhibitors and admission fees from those attending the conference. App. Ex. No. 6; Dept. Ex. No. 2. Approximately 23,000 to 25,000 people attend a conference with about one half of the attendees being exhibitors. Tr. p. 41; App. Ex. No. 2. One half of the people attending the conference then are there for the single purpose of demonstrating and selling their products.

The other half of the attendees, the conferees, are there because the conference is of interest to them professionally either because of the networking possibilities, or the educational programs that are offered as short courses, or to learn about the products or services exhibited. Department Regulation 2005(g) notes that organizations whose activities primarily serve to benefit its members are not operated exclusively for

charitable purposes: Nonprofit Bar Associations, Medical Associations, Lions Clubs, Rotary Clubs, Chambers of Commerce, and other professional, trade or business associations and labor unions, as to which an important purpose is to protect and advance the interests of their members in the business world, are not organized and operated exclusively for charitable purposes, even though such organizations may engage in some charitable work. 86 Ill. Adm. Code. § 130.2005(g). The ABC conference benefits the exhibitors who are given a chance to “sell their wares” to a captive audience and it benefits the conferees who are able to advance their professional interest in science. To infer any charitable motive to the attendees is not realistic.

Mr. Smith testified that the benefits of the conference extend to society. “And the latest scientific developments are discussed there.” “And once the conference is over, these go back either to the universities for further development or they go out into the public where some company may pick it up and then turn around and manufacture an instrument or create a process.” Tr. p. 43. As the testimony indicates, there is obviously no immediate windfall to the public from the sponsorship of the convention. Any positive effect on the public is indirect and incidental and is not the primary or substantial purpose or effect necessary to warrant the granting of a charitable tax exemption. Gas Research Institute v. Dep’t. of Revenue, 154 Ill. App. 3d 430 (1st Dist. 1987).

The main expense in sponsoring the annual conventions is “drayage.” This consists of “taking someone’s booth when it arrives in the city, bringing it into the convention center, setting it up. All the labor involved with that, laying the carpet, the decorations for the entire show. And then taking it all down in the end, putting it on the dock and having it shipped out.” Tr. p. 119. The drayage expenses for 2000, 2001 and

2002 are between \$5 and \$6 million, far exceeding the amount of charitable contributions claimed by ABC in its Form 990's. App. Ex. No. 6; Dept. Ex. No. 2.

ABC'S bylaws state that its funds, allocable for charitable distribution, "shall be the excess, if any, of the revenues of the corporation over the expenses arising from all the operations of the business." App. Ex. No. 4. It is suggested that the "business" referred to in the bylaws is the "business" of sponsoring the annual convention. This provision in the bylaws prevents me from concluding that ABC is organized "exclusively" for charitable purposes.

The sponsorship of the convention is a business. The attendees are there for business purposes. If there are funds left over after paying the expenses of the business, the funds will be allocated to charity. If there were no business, there would be no excess funds allocable for distribution. The generation of excess funds is secondary and incidental to ABC's main purpose because the excess funds are entirely dependent on the "business" of the annual conference. ABC's bylaws, which state that allocable funds shall be the excess, if any, of revenues over expenses, anticipate the situation where ABC could sponsor an annual conference that would generate no excess funds. It defies logic to conclude that ABC's primary purpose is charitable when the bylaws anticipate years in which an annual conference may be held with no excess funds generated. The excess funds available for distribution, if any, are dependent on the business of the annual conference and, accordingly, the sponsorship of the annual conference must be considered the primary purpose of ABC.

There was testimony at the evidentiary hearing that in sponsoring the annual conference, ABC does make some charitable contributions. Mr. Smith testified that no one is turned away from the annual convention. "They come and explain to us why they

can't afford it or can't pay the registration fee. We turn around and hand them a badge.” Tr. p. 42. There was no testimony as to whether ABC advertised that anyone wishing to attend, but unable to afford the registration fee could have the registration fee waived. The “Advance Registration Information” for the 2004 Anywhere conference states in a conspicuous box “IMPORTANT: PAYMENT MUST ACCOMPANY COMPLETED FORM FOR THE REGISTRATION TO BE PROCESSED!” There is no mention on the “advance registration information” that the fee could be waived. The early registration fee for the Anywhere conference was \$85. App. Ex. No. 17. It should be noted that anyone wanting the \$85 fee waived who did not live in the host city would have to be able to afford transportation costs to the city to attend the conference, as well as housing costs while at the convention. There was no testimony that either of these costs would be waived. One of the characteristics of a charitable organization according to Korzen is that it not place obstacles in the way of those who would avail themselves of the charitable services it dispenses. The lack of advertising that the registration fee could be waived is an obstacle in the way of anyone wishing to attend the conference but unable to afford it. See, for example, Highland Park Hospital v. The Department of Revenue, 155 Ill. App. 3d 272 (2d Dist. 1987) where the court found that the Intermediate Care Center did not qualify for a charitable exemption because, *inter alia*, advertisements for the facility did not disclose its charitable nature and there was no evidence that the general public knew that free care was available.

Similarly, there was testimony at the evidentiary hearing that approximately 1,200 of the 13,000 conferees at the annual conference registered for short courses. Of the 1,200 who registered, approximately 120 have the fees for the short courses waived. Tr. pp. 76-77. Fees for short courses range from \$175 to \$1,050, depending on whether

registration is paid early and the length of the course. The information for the 2004 Anywhere convention lists all the short courses available offered “at a reasonable cost for conferees.” There is no mention that any of the fees for the short courses could be waived. App. Ex. No. 17. The lack of advertising that the fees for short courses could be waived is an obstacle in the way of those wishing to take a short course but unable to afford it. Highland Park, *supra*.

Several other Korzen guidelines are not met by ABC. None of ABC’s funds are derived from public and private charity. As Mr. Smith testified, ABC derives its revenue from two sources: registration fees of those attending the conference and taking the short courses and the rental of booth space by the exhibitors at the conference. Tr. p. 35. ABC’s Form 990, “Return of Organization Exempt from Income Tax,” for year 2000, 2001, and 2002 shows “zero” for “contributions, gifts, grants and similar amounts received.” App. Ex. No. 6; Dept. Ex. No. 2

Another guideline from Korzen is that the organization has no capital, capital stock or shareholders. The record with regard to capital stock is unclear. Mr. Smith testified that ABC does not have capital stock. Tr. p. 59. ABC’s bylaws state under “Article VI – Stock” that “Certificates for shares of the capital stock of the corporation shall be in the form adopted by the Board of Directors.” “All such certificates shall be numbered consecutively, and the name of the entity owning the shares represented thereby, [and] the number of such shares and the date of issue, shall be entered on the books of the corporation.” App. Ex. No. 4. The testimony and the bylaws are contradictory and accordingly, I am unable to conclude that ABC does not have capital stock.

ABC's bylaws state further that the shareholders of ABC shall be The Society for Analytic Chemists of ABC ("ABC-1") and the Spectroscopy Society of ABC ("ABC-2"). App. Ex. No. 4. Mr. Smith testified at the evidentiary hearing that both Societies are exempt from income tax under the Internal Revenue Code. The ABC-1 is a non-profit organization of 500 members dedicated to the advancement of analytical chemistry through science education. The ABC-2 is a professional society of scientists dedicated to the promotion of education for its members and the ABC area community. Tr. pp. 59-63; App. Ex. Nos. 9 and 10.

ABC's Form 990 for 2002 shows that ABC made "cash grants and allocations" of \$903,038. Of this amount, \$400,652 was allocated to ABC-1 and \$396,379 was allocated to ABC-2. ABC itself made grants of \$54,207 in support of award symposiums, excellence in teachings awards, and equipment grants. Also included in the \$903,038 is \$51,800 that ABC paid for "honorariums" to short course instructors at the annual conference. App. Ex. No. 6. Although ABC includes these amounts in their "cash grants and allocations," the "honorariums" cannot be considered charity. Mr. Smith testified that "if [a short course] is more sophisticated, [and] appeals to what would probably be a narrower audience, we may have to pay more to get an instructor to come in and teach that course, and therefore, the corresponding fee is higher. Tr. pp. 78-79. As this testimony indicates, ABC is paying instructors to teach the short courses at the annual conference and these "honorariums" are in the nature of salary expense. Sixty seven instructors were paid in 2002, at amounts of \$350, \$700, \$1050 or \$1,400. App. Ex. No. 6.

ABC's Form 990 for 2001 shows results similar to 2002. ABC made "cash grants and allocations" of \$969,062, with \$444,520 going to ABC-1 and \$413,935 going to

ABC-2. ABC itself made grants of \$61,607 in support of award symposiums and excellence in teaching awards and paid \$49,000 in “honorariums” to short course instructors. Dept. Ex. No. 2.

Mr. Smith testified that once the annual conference is over and all the bills are paid, “the money that’s left over is then funneled with the help of the society to ... the ABC-1 and the ABC-2 to promote science education, first through their own programs which benefit local scientists, those are people who form those two organizations, bring in technical speakers, put on workshops that would benefit them in their profession.” “And then to make grants again to middle schools, high schools, colleges and universities.” Tr. pp. 47-48. ABC’s Form 990 states that ABC distributes the corporation’s income to the shareholders societies. ABC-1 and ABC-2 “receive grants from the ABC Conference, which in turn distribute the money in the form of grants and scholarships to tax-exempt organizations and individuals.” App. Ex. No. 6.

The testimony and evidence shows that ABC “funnels” its excess funds to its shareholders and that the shareholder societies, ABC-1 and ABC-2, then purportedly distribute the money in the form of grants and scholarships. The problem with this organizational setup is that I must conclude that the actual contributions are made by the shareholder societies, not by ABC. ABC is in effect declaring a dividend to its shareholders which it calls “grants to related organizations” on its Form 990’s. ABC’s Form 990 lists its own contributions but do not list how the “grants to related organizations” are distributed. ABC offered into evidence a document showing “ABC-2 2002-2003 Grants/Awards List” and “ABC-1 2002-2003 Scholarships, Grants and Awards,” which lists recipients of the ABC-2 and ABC-1 awards. App. Ex. No. 11. The underlying documents for this listing were not offered into evidence. There was no

testimony as to who compiled this listing. No affidavits were offered and no one from ABC-2 or ABC-1 testified as to the authenticity of the listing. Additionally, no financial statements or Form 990 was admitted for ABC's shareholders so I am unable to determine how the grants from ABC are treated on their own financial records.

ABC did not suggest, and my own research does not indicate, any case where an organization was found to be charitable because it "funnels" money to shareholders who in turn make contributions to charity. It is suggested here that if there is a charitable organization in this instance, it is the shareholder rather than the organization that declared the dividend. ABC did not suggest, and my own research does not indicate, any case where a shareholder's contributions are attributable or transferable back to the organization that declared the dividend.

ABC'S shareholders were not parties to the instant proceeding. ABC admitted into evidence an Internal Revenue Service publication listing exempt organizations, including ABC-1 and ABC-2. App. Ex. No. 10. Mr. Smith testified that both shareholders were 501(c)(3) organizations and that ABC-1 is a "private foundation." Tr. p. 61. No information was presented on ABC-1's or ABC-2's organizational structure. The information and evidence presented is not sufficient for me to conclude that the shareholders are "charitable" as defined by Illinois law.

Even if the shareholder organizations were to have some characteristics of a charity, I cannot reach any conclusions with regard to the money dispensed by them. No evidence was presented as to what criteria the shareholder societies use to assess what person or organization receives a grant. Mr. Smith testified that the shareholder societies get more grant applications than they can fund. Tr. pp. 68-69. There was no testimony or evidence as to who applied for funds and was denied. No grant application was

presented. Mr. Smith was asked what the “aims and goals” were of the “two organizations that are the shareholders of ABC?” He responded “to promote science education among its member[s] and among the public in general.” Tr. p. 60. There was also testimony that the shareholders use the funneled money to “promote science education, first through their own programs which benefit local scientists, those are people who form those two organizations, bring in technical speakers, put on workshops that would benefit them in their profession.” Tr. pp. 47-48. The ABC-2 advertises itself as a “professional society of scientists dedicated to the promotion of education in science for society members and the ABC area community.” ABC-2 welcomes new members “subject to geographical limitations.” App. Ex. No. 9.

There is insufficient support in the record for me to conclude that the grants dispensed by ABC-1 and ABC-2 are dispensed to all who need and apply for them. It appears from the testimony and the evidence that the funds dispensed by the shareholder societies have a direct benefit mainly to their members. The money is used to “promote science among its members” and put on workshops that would benefit members in their professions. The reason for exemptions in favor of charitable institutions is the benefit conferred upon the public by them, and a consequent relief, to some extent, of the burden upon the State to care for and advance the interests of its citizens. People v. Young Men’s Christian Ass’n, 365 Ill. 118 (1936). Funds that are being used to benefit the members of a society are conferring a direct benefit on the membership, but not the public. Tax exemptions are to be strictly construed since they are inherently injurious to public funds because they impose lost revenue costs on taxing bodies. Gas Research Institute v. Dep’t, 154 Ill. App. 3d 430 (1st Dist. 1987). These lost public funds may, in fact, be otherwise used to fund state programs that benefit the public at large, rather than

the members of a professional society. I am unable to conclude from the testimony that the funds dispensed by the shareholder societies are reducing a burden on the State to care for and advance the interests of its citizens.

There was also insufficient support in the record for me to conclude that the benefits derived from the grants are for an indefinite number of persons. No evidence was presented as to the dollar amount of contributions that went to members versus nonmembers of the shareholder societies. There was insufficient support in the record for me to conclude that the shareholder societies do not place obstacles in the way of those who would avail themselves of the grants being dispensed. No information was presented on how the shareholder societies decide who gets the limited funds. No information or data was presented on who applied for grants and was denied. Since ABC-2'S membership is "subject to geographical limitations," I question whether the funds dispensed are similarly restricted.

ABC obviously performs some worthwhile services for the community, There was testimony at the evidentiary hearing that ABC gives some organizations either free or reduced price exhibition space if they "align themselves along the same goals that we have, for both science and education or to benefit the public in general." ABC did not charge the Naval Research Labs for space at the convention. Tr. pp. 79-80. ABC provides grants for laboratory equipment and supplies to local middle schools, high schools and colleges in the host city. ABC gave a \$25,000 grant to Northeastern University for microscopes. Tr. p. 47. For the 2004 conference in Anywhere, ABC waived the registration fee for students in their senior year "Instrumental Analysis" class at University's Department of Chemistry. The waiver was requested by the instructor. Tr. pp. 88-93; App. Ex. Nos. 14 and 15.

However, based on the evidence admitted at the hearing, I conclude that ABC has not shown that it is organized and operated as an exclusively charitable organization. While ABC performs some charitable acts, it has not presented sufficient evidence that it meets other criteria set forth by the Illinois Supreme Court's Korzen decision. ABC derives its funding from exhibitors and those attending the ABC conference. ABC shareholders, which disburse the excess money, appear to be benefiting their members. Any public benefit resulting from ABC's activities is incidental to its primary purpose of sponsoring the ABC conference.

For the above stated reasons, I recommend that the Department's determination denying ABC a sales tax identification number be affirmed

Date: March 21, 2005

Kenneth J. Galvin
Administrative Law Judge